

REMARKS/ARGUMENTS

In this response, claims 1, 18, 21, 37, and 50 are being amended, claims 63-66 are being added, and no claims are being canceled. Thus, claims 1-16 and 18-66 will be pending after entry of the amendment, with claims 9-12, 45, 46, 58, and 59 being withdrawn from consideration. Reconsideration and allowance of the application in view of the above amendments and the remarks below is respectfully requested.

Claim 1 is being amended to further recite a “patient-external communications device configured to receive data relating to the selected one of the tachycardia, bradycardia, and asystole prevention therapies”, and also a “display coupled to the patient-external communications device for displaying the received data”. Support for the amendment can be found for example in FIG. 7 and its associated description. Independent claims 21, 37, and 50 have been amended similarly. Claim 21 has also been amended to eliminate an extraneous “detection circuitry”. No new matter has been added.

Dependent claim 18 is being amended to depend from claim 1 rather than from canceled claim 17, with suitable correction of “the rate lower than the pacing rate” to “the rate below that of the bradycardia therapy” in conformity with claim 1. No new matter has been added.

New claims 63-66 depend from independent claims 1, 21, 37, and 50, respectively, and further specify that the patient-external communications device facilitates communication with a network or server system. Support for this feature can be found at least in connection with FIG. 7 and its description. No new matter has been added. These claims are submitted to be in keeping with the restriction requirement set forth in the Office Action of 09/07/2006, and subsequent election by Applicants.

Claim Rejections - §112

The Office Action rejected claim 18 under 35 U.S.C. §112, second paragraph, as being indefinite.

The flaw in claim 18 has been corrected by the amendment above. Withdrawal of the rejection is requested.

Claim Rejections - §102

The Office Action rejected claims 1, 2, 4-6, 8, 13, 14-16, 18-22, 24-26, 28-38, 40-42, 44, 47-51, 53-55, 57 and 60-62 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication US 2004/0172066 (Wagner et al.), hereinafter “Wagner”.

Without acquiescing to the rejection, Applicants submit that the amendments above to each of independent claims 1, 21, 37, and 50 distinguish them over Wagner. Wagner does not anticipate any of these independent claims, nor any of their respective dependent claims. Withdrawal of the rejection of claims 1, 2, 4-6, 8, 13, 14-16, 18-22, 24-26, 28-38, 40-42, 44, 47-51, 53-55, 57 and 60-62 is requested.

Claim Rejections - §103

The Office Action rejected claims 3, 7, 23, 27, 43, 52, and 56 under 35 U.S.C. §103(a) as being obvious over Wagner, in view of “Official Notice [being] taken that resynchronization therapy and sub-threshold stimulation in cardiac treatment devices is old and well-known …”.

Without acquiescing to the rejection, Applicants note that the subject matter cited in Wagner, as well as the invention as presently claimed, were, at the time the invention was made, “owned by the same person or subject to an obligation of assignment to the same person”, as evidenced by (1) the assignment recorded on or about 07/31/2003 at reel/frame 014328/0602 from Darrell Wagner, Adam Cates, and Kristine Larsen-Kelly to Cardiac Pacemakers, Inc., in connection with U.S. Application 10/377,274, published as U.S. Patent Application Publication US 2004/0172066 (Wagner et al.) and issued as U.S. Patent 7,392,081 (Wagner et al.), and (2) the assignment recorded on or about 06/29/2004 at reel/frame 014796/0131 from Eric Lovett, Adam Cates, Darrell Wagner, Michael Favet, and Apurv Kamath to Cardiac Pacemakers, Inc., in connection with the present application. Wagner is therefore not available as a reference in view of the provisions of 35 U.S.C. §103(c). The rejection under §103(a) cannot be sustained and should be withdrawn.

To the extent Applicants have not responded to any characterization by the Examiner of the asserted art or of Applicants' claimed subject matter, or to any application by the Examiner of the asserted art to any claimed subject matter, Applicants wish to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner's characterizations, or any other assertions or statements beyond that provided above is unnecessary. Applicants reserve the right to address in detail any such assertions or statements in future prosecution.

CONCLUSION

The application is submitted to be in condition for allowance, the early indication of which is earnestly solicited. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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Date: September 16, 2008

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